

**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Anthony Graves,  
Newark

CSC Docket No. 2020-1446

Request for Enforcement and Interim  
Relief

**ISSUED: APRIL 17, 2020 (SLK)**

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Anthony Graves, a Fire Captain with Newark, represented by Tisha N. Adams, Esq., petitions the Civil Service Commission (Commission) for enforcement of prior Commission decisions and interim relief regarding a Preliminary Notice of Disciplinary Action (PNDA) that was issued against him.

By way of background, on March 29, 2016, the Union County Prosecutor’s Office charged Graves with impersonating a law enforcement officer, a fourth-degree offense, which led to his indefinite suspension without pay until the criminal charges were adjudicated. On January 22 and 23, 2019, Graves sent the appointing authority letters advising that his criminal matter had been resolved and requesting that he be reinstated and be awarded back pay. However, the appointing authority did not reinstate him, and Graves filed for interim relief. In *In the Matter of Anthony Graves* (CSC, decided April 17, 2019), the Commission ordered that Graves receive back pay from January 22, 2019 until he was either reinstated or issued a new PNDA. Further, it indicated that should he be reinstated or not ultimately removed from employment, Graves was entitled to back pay, benefits and seniority pursuant to *N.J.A.C. 4A:2-2.10(c)2*. His request for counsel fees was denied. However, instead of reinstating Graves or issuing a new PNDA, the appointing authority converted his suspension without pay to a suspension with pay, which led to him filing a request for enforcement. In *In the Matter of Anthony Graves* (CSC, decided September 10, 2019), the Commission found that the appointing authority was in non-compliance with its prior decision. It ordered that within 20 days of the issuance of that decision, the appointing authority was to either issue a new PNDA setting forth the administrative charges against Graves or reinstate him. Further, it indicated that upon a finding that the appointing authority had not complied with this order, the Commission would order his reinstatement with back pay to the date of his initial indefinite suspension without

pay. Additionally, the appointing authority would be subject to fines up to \$10,000, interest and counsel fees. Further, the Commission ordered the appointing authority to provide a detailed accounting to Graves explaining how it calculated any payments awarded, seniority and benefits.

In his request for enforcement and interim relief, Graves requests mitigated back pay from the date of his initial indefinite suspension without pay, April 6, 2016 to January 21, 2019. Additionally, he requests back pay from January 22, 2019 to the present in accordance with his seniority, pay grade, medical benefits and across the board adjustments including, but not limited to pension benefits, sick leave credits, vacation credits and all other benefits to which he is entitled. Further, Graves requests all union dues deducted from the initial back pay award in the amount of \$605.79 and all subsequent payroll deductions in violation of *Janus v. American Federation of State, County, and Municipal Employees, Council 31, et al.*, 138 S. Ct. 2448 (2018) and attorney fees. In the alternative, Graves requests that this matter be transmitted to the Office of Administrative Law (OAL) for a hearing.

Graves presents that on October 2, 2019, which was 20 days after the Commission's September 10, 2019 decision, he was reinstated and no new PNDA was issued prior to that date. Therefore, he argues he is entitled to mitigated back pay from the date of his indefinite suspension. Further, Graves requests that the new PNDA that the appointing authority issued against him on October 31, 2019 be dismissed as he is entitled to reinstatement upon the dismissal of criminal charges. He indicates that the appointing authority did not issue a new PNDA with administrative charges that remained from the initial April 6, 2016 PNDA. Instead, it issued a new complaint regarding misconduct on May 24, 2019, amended the complaint on October 8, 2019 to include inefficiency and neglect of duty and then issued a new PNDA with numerous new charges. Graves argues that these actions were taken in bad faith and with invidious motivation in retaliation for a civil lawsuit that he filed against the appointing authority. He refutes the alleged charges and asserts that many of the allegations can be refuted by prior statements or witnesses who cooperated with the Union County's Prosecutor's investigation and by sworn testimony during his trial.

Additionally, Graves asserts that the new PNDA was not timely as it was not issued within 20 days of the Commission's September 10, 2019 decision and because it violates *N.J.S.A. 40A:14-28.1*, which requires that a paid member of a fire department shall not be removed from employment for violation of internal rules unless the complaint is filed no later than 45 days after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. A failure to comply with this section shall require the dismissal of the complaint. The 45-day limit shall begin on the day after the disposition of the criminal complaint. Graves highlights that in the Commission's April 17, 2019 decision, it indicated that the appointing authority had enough

information to issue a PNDA on April 6, 2016, where it listed administrative charges. Therefore, he asserts that the PNDA needed to be issued by May 21, 2016 or at least 45 days from when the criminal charges were disposed on January 17, 2019, which would be March 3, 2019. Graves argues that the latest PNDA should be dismissed.

Graves also requests that his salary be corrected to reflect a captain's base pay at the sixth step and that he be paid the difference between what is owed for payments from January 22, 2019 to the present. He indicates that he was paid back pay in the amount of \$42,816.04 and that his current biweekly payroll amount is \$4,325.96, both of which he claims are inaccurate. Graves presents that his promotion to Captain was effective August 4, 2014 at the first salary step. Therefore, he argues that in January 2019, he was entitled to a Captain's salary at the sixth step and not the fourth step, as the appointing authority used. Moreover, he indicates that the appointing authority has not provided him with health care coverage or money to purchase medicine due to his suspension without pay on April 6, 2016. Graves states he pays \$455.09 for his medications. Graves represents that he was advised that he had health insurance effective September 1, 2019. However, when he went to see the doctor on October 3, 2019, he was advised that his insurance was not valid. Thereafter, Graves provided the appointing authority a letter from a medical provider indicating that he was under medical care and could not return to work. Subsequently, the appointing authority advised him that he could not enroll for health benefits until January 2020. Graves asserts that the appointing authority demonstrated bad faith and invidious motivation by continuing to only partially comply with the Commission's orders in an effort to avoid the imposition of fines with interest and counsel fees.

In response, the appointing authority, represented by John J. Zidziunas, Esq., asserts that Graves's request is premature as a Final Notice of Disciplinary Action (FNDA) has not been issued against him as the charges against him have not yet been adjudicated. It presents that a departmental hearing has been scheduled.<sup>1</sup> The appointing authority further states that Graves was reinstated on October 2, 2019 and he was derelict in his duty when he did not return to work on October 3, 2019 and has been on leave since that time.

In reply, Graves presents that on October 2, 2019, he received a personnel order that his "command" was "Department of Public Safety/Fire

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<sup>1</sup> The appointing authority indicated that the departmental hearing was scheduled for December 18, 2019. Graves has since advised this agency that the departmental hearing started February 26, 2020 and was scheduled to continue March 23 and March 24, 2020. Graves indicates that he requested an adjournment because the appointing authority did not forward requested discovery until March 19, 2020, one business day before the disciplinary hearings were to resume. Graves advised this agency that the parties have not scheduled a date when the departmental hearing is to resume.

Division/Roving/Tour 1.” He presents that prior to filing a civil lawsuit against the appointing authority and being indefinitely suspended, his command was in the Arson Unity, Division of Internal Affairs. On March 12, 2015, he was involuntarily reassigned to Special Service and then to Roving Tour 1. Thereafter, Graves filed a grievance to be reassigned back to the Division of Arson. He presents that he is certified by the State as an arson investigator and has not worked in a firehouse since approximately 2008. Graves considers these reassignments as adverse action done in retaliation for his lawsuit against the appointing authority. Graves argues that there is a clear likelihood of success on the merits of the case. Initially, he reiterates his procedural arguments that the latest PNDA was more than 20 days after the Commission’s last decision and that the administrative charges were in violation of the 45-day rule. Additionally, Graves describes in detail his response to each charge against him. He states that he is in danger of immediate or irreparable harm as his removal will make him unable to afford his medicine and his health will decline if he loses his health benefits, which were only recently restored. Further, he reiterates his claim that he is entitled to mitigated back pay from April 6, 2016 to January 21, 2019 at pay step six and that pay that he is entitled to receive since January 22, 2019 should also be at pay step six. Also, he reiterates his claim that he is entitled to be reimbursed for his union dues as he is no longer a member. Graves argues that other parties shall not be injured if the PNDA is dismissed as he claims that the appointing authority has acted in bad faith and that it is in the public interest to not keep him in “limbo” indefinitely.

## CONCLUSION

*N.J.A.C.* 4A:2-1.2(c) provides the following factors for consideration in evaluating petitions for interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

*N.J.S.A.* 40A:14-28.1 provides that a person shall not be removed from employment or a position as a paid member of a paid or part-paid fire department or force, whether that department or force be created, established and maintained by a municipality, fire district, regional entity, county, authority or the State, or suspended, fined or reduced in rank for a violation of the internal rules and regulations established for the conduct of employees of the department or force, unless a complaint charging a violation of those rules and regulations is filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. A failure to comply with this section shall require a dismissal of the complaint. The 45-day time limit shall not apply if an investigation by the fire department or force

for a violation of the internal rules and regulations of the department or force is included directly or indirectly within a concurrent investigation of that member of the department or force for a violation of the criminal laws of this State; the 45-day limit shall begin on the day after the disposition of the criminal investigation. The 45-day requirement in this section for the filing of a complaint against a member of the department or force shall not apply to a filing of a complaint by a private individual.

Regarding Graves' request that the October 31, 2019 PNDA be dismissed, he presents that in *In the Matter of Anthony Graves* (CSC, decided September 10, 2019), the Commission ordered that within 20 days of the issuance of this decision, the appointing authority shall either issue a new PNDA setting forth the administrative charges against him or reinstate him. Therefore, he argues since the new PNDA was issued on October 31, 2019, which is more than 20 days after September 10, 2019 decision, this PNDA is untimely and should be dismissed. However, as Graves was reinstated on October 2, 2019, the Commission finds that the appointing authority substantially complied with the September 10, 2019 order. Further, the Commission notes that in its April 17, 2019 decision, it stated that the appointing authority was not prohibited from further investigation and only that it could not keep Graves out of work without pay absent actually issuing new charges. Therefore, the Commission finds that the new PNDA is not untimely. In reference to Graves' argument that the new PDNA violated the 45-day rule, the new PNDA contains, in addition to internal rules violations, administrative charges under Title 4A, so the 45-day rule is not applicable. With respect to Graves' arguments that he is likely to succeed on the merits and other arguments related to the interim relief standard, as stated in the Commission's April 17, 2019 decision, the Commission will not attempt to determine such a disciplinary appeal on the written record without a full plenary hearing before an Administrative Law Judge who will hear live testimony, assess the credibility of witnesses, and weigh all the evidence in the record before making an initial decision. Concerning Graves' alternative request that the matter of his discipline be transmitted to the OAL, this request is premature as an FNDA has not yet been issued. *See N.J.A.C. 4A:2-2.8*. Moreover, regarding any procedural complaints that Graves has concerning the departmental hearing, after a FNDA is issued and if major discipline is levied, any timely appeal of that matter will be transmitted to the OAL and any procedural defects in the departmental hearing would thus be deemed cured as the OAL's review is *de novo*.<sup>2</sup> Finally, with regard to Graves' allegations that the appointing authority's charges against him are in bad faith, with invidious motivation and in retaliation for his civil lawsuit against the appointing authority, there is insufficient evidence in the record to support this allegation at this time. If this matter is ultimately heard at the OAL, Graves can make this argument as part of that proceeding.

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<sup>2</sup> It is noted that if Graves were to waive his departmental hearing, a FNDA would be required to be issued. If Graves timely appealed that FNDA, that appeal would be transmitted to OAL.

Concerning Graves' enforcement request for back pay and associated benefits from April 6, 2016 through January 21, 2019, and such back pay be based upon his rank as Captain at the sixth step, such request is premature as the issue of his removal is still outstanding. Regarding any discrepancies regarding his pay after January 21 which involves the appropriate salary step, associated benefits, refund of union dues or related issues, the record is insufficient to make a determination. If a FNDA is ultimately issued to Graves, this matter can be addressed at the OAL. If the departmental hearing does not result in any sustained charges, the parties shall have 60 days from the date of that determination to resolve any issues concerning back pay. If the parties are unable to resolve that matter, a request for back pay to the Commission can be made at that time.

### **ORDER**

Therefore, it is ordered that Anthony Graves' requests for enforcement and interim relief are denied. Further, the Commission orders that the departmental hearing continue no later than 30 days of the of issuance of this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 15<sup>TH</sup> DAY OF APRIL, 2020

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Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: Anthony Graves  
Tisha N. Adams, Esq.  
Aondrette Williams  
Kenyatta K. Stewart, Corporation Counsel  
John J. Zidziunas, Esq.  
Records Center